

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
February 11, 2016

v

TERRY TAYLOR,

Defendant-Appellant.

No. 324419
Wayne Circuit Court
LC No. 14-004407-FC

Before: CAVANAGH, P.J., and RIORDAN and GADOLA, JJ.

PER CURIAM.

Defendant was charged with carjacking, MCL 750.529a, and receiving or concealing a stolen motor vehicle, MCL 750.535(7). A jury acquitted defendant of carjacking, but convicted him of receiving or concealing a stolen motor vehicle. The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to 4 to 15 years in prison. Defendant appeals as of right, asserting that offense variable (OV) 14 of the sentencing guidelines was improperly scored. Because we agree that OV 14 was erroneously scored, and the scoring error affects the appropriate guidelines range, we vacate defendant’s sentence and remand for resentencing.

Determining whether a trial court properly scored sentencing variables is a two-step process. First, the trial court’s factual determinations are reviewed for clear error and must be supported by a preponderance of the evidence. The clear error standard asks whether the appellate court is left with a definite and firm conviction that a mistake has been made. Second, the appellate court considers de novo ‘whether the facts, as found, are adequate to satisfy the scoring conditions prescribed by statute.’ [*People v Rhodes*, 495 Mich 938, 938-939; 843 NW2d 214 (2014) (citations omitted)].

OV 14 considers the defendant’s role in the offense. MCL 777.44(1). The court is to assess 10 points if the defendant “was a leader in a multiple offender situation” or zero points if the defendant “was not a leader in a multiple offender situation.” *Id.* The court is to consider “[t]he entire criminal transaction . . . when scoring this variable.” MCL 777.44(2)(a). “[T]he plain meaning of ‘multiple offender situation’ as used in OV 14 is a situation consisting of more than one person violating the law while part of a group.” *People v Jones*, 299 Mich App 284, 287; 829 NW2d 350 (2013), vacated in part on other grounds 494 Mich 880 (2013). A leader is

one who leads another, as by “guiding, preceding, showing the way, directing, or conducting.” *People v Rhodes (On Remand)*, 305 Mich App 85, 90; 849 NW2d 417 (2014).

In this case, the victim picked up a prostitute identified as “Little Boo.” When he changed his mind about utilizing her services, she directed him to drive her back to the street where he had picked her up and then to a particular house on that street. When they arrived at the house, she robbed the victim of his remaining cash at knifepoint and then honked the horn. Defendant was one of several men who responded. After being told that Little Boo had taken the victim’s money, defendant promised to get it back for him. He got into the backseat of the victim’s car and directed the victim to drive to another location. Once there, defendant ordered the victim out of the car, patted him down, and then drove away with Little Boo. Defendant was subsequently found with the car and arrested. Over defendant’s objection, the trial court scored OV 14 at 10 points on the ground that “the defendant was the one who took the car” and “was the one that controlled the car, and what was done with the car after it was taken from the complainant.”

While the trial court did not clearly err in finding that it was defendant who took the car and controlled what was done with it, those findings do not satisfy the criteria necessary for scoring OV 14 at 10 points. The defendant must be one of two or more people who are violating the law while part of a group and the defendant must demonstrate leadership of the group by orchestrating the commission of the offense or directing or guiding the actions of his confederates. See, e.g., *People v Ackah-Essien*, 311 Mich App 13; ___ NW2d ___ (2015); *People v Gibbs*, 299 Mich App 473, 494; 830 NW2d 821 (2013). The trial court did not expressly find that defendant and Little Boo were acting in concert to rob Little Boo’s customers. Assuming that it tacitly made such a finding, the fact that defendant was the person who took the car and controlled its disposition is some evidence of leadership, but standing alone is not sufficient to establish leadership by a preponderance of the evidence. See *Rhodes*, 305 Mich App at 90. Therefore, the trial court erred in assessing 10 points for OV 14. Because the scoring error affects the appropriate guidelines range, defendant is entitled to resentencing. See *People v Francisco*, 474 Mich 82, 89-92; 711 NW2d 44 (2006).

Defendant’s sentence is vacated and the case is remanded for resentencing. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Michael J. Riordan
/s/ Michael F. Gadola